

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:20-cv-00189-MR**

ISIAN EVANS MCCLELLAN,

Plaintiff,

vs.

TODD SCHETTER, et al.,

Defendants.

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ORDER

THIS MATTER is before the Court sua sponte.

Plaintiff Isian Evans McClellan ("Plaintiff") filed this lawsuit on July 10, 2020. [Doc. 1]. On April 27, 2021, Plaintiff's Third Amended Complaint [Doc. 28] survived initial review as to Plaintiff's claims against Defendants Todd Schetter and Caleb Davis for their failure to protect under the Eighth Amendment. [Doc. 29]. The Court ordered the Clerk of Court to begin the procedure for waiver of service on these Defendants pursuant to Local Civil Rule 4.3. [Id. at 13]. For reasons not relevant here, the Court modified its order to allow service of Defendant Schetter by the U.S. Marshal by summons. [4/27/2021 Text Order]. A request for waiver of service for Defendant Davis was transmitted to the NCDPS on April 27, 2021, making waiver of service due by June 28, 2021. [Doc. 31]. Defendant Schetter was

served by summons on May 9, 2021. [Doc. 39]. After allowing Defendant Schetter additional time, Defendant Schetter timely answered the Third Amended Complaint. [Doc. 42]. On June 28, 2021, Defendant Davis' waiver of service was returned executed, making his answer due on August 27, 2021. [See 6/28/2021 Docket Entry].

To date, however, Defendant Davis has not answered the Complaint or otherwise defended this action, and the Plaintiff has not taken any further action with respect to Defendant Davis. The Court, therefore, will order the Plaintiff to take action with respect to this Defendant so that this matter can proceed.

Given defense counsel's history with this Court in failing to abide the deadlines of the Federal Rules of Civil Procedure and the Court, the Court will direct the Clerk to send a copy of this Order to James Trachtman, Special Deputy Attorney General, who the Court understands to be defense counsel's supervisor.


ORDER

IT IS, THEREFORE, ORDERED that Plaintiff shall take further action to prosecute this case against Defendant Davis within fourteen (14) days of this Order. Failure to take any such further action shall result in the dismissal of this Defendant without prejudice.

The Clerk is respectfully instructed to email a copy of this Order to James Trachtman, Special Deputy Attorney General, Section Head, Public Safety Section, North Carolina Department of Justice at jtrachtman@ncdoj.gov.

IT IS SO ORDERED.

Signed: November 9, 2021



Martin Reidinger
Chief United States District Judge

